

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 20-1744-CFC
)	
WALMART INC. AND WAL-MART)	
STORES EAST, LP,)	
)	
Defendant.)	

NOTICE OF SUPPLEMENTAL AUTHORITY

Walmart respectfully submits the decision in *United States v. Ridley's Family Markets, Inc.*, No. 1:20-cv-173 (D. Utah June 7, 2021) (attached as Ex. A) as non-precedential supplemental authority in support of its motion to dismiss (D.I. 26). The decision supports Walmart's motion in two important respects.

First, the court agreed that “the United States cannot seek civil penalties for a violation” of 21 C.F.R. § 1306.06, both as a textual matter and because any contrary reading would “nullify” § 1306.04(a)’s scienter element. (Ex. A at 9-10.) That is one reason why Count II here must be dismissed. (D.I. 27 at 19-22; D.I. 47 at 7-9.)

Second, the court recognized that § 1306.04(a) claims must plausibly allege that “individual ... pharmacists who received, reviewed, and filled the prescriptions” were, at minimum, willfully blind to their invalidity. (Ex. A at 7.) Importantly, the Court observed that watering down “the knowledge requirement of § 1306.04(a)” would “severely interfere” with pharmacists’ jobs and “could ultimately damage

patients.” (*Id.* at 10.) Here, any willful-blindness theory fails because the Government does not allege that anyone, let alone any pharmacist “who received, reviewed, and filled the prescriptions at issue” (*id.* at 7), intentionally avoided learning the facts. (*See* D.I. 47 at 2-3.)

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